

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5749 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

G.I. RATHWA - Respondent(s)

=====

Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 24/08/2005****ORAL JUDGMENT**

Though served, nobody appears on behalf of the respondent workman and the matter was adjourned time and again. Under the circumstances, this Court has no other alternative but to decide and dispose of the present Special Civil Application on merits, ex-parte.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award dated 8.12.2003 passed by the Industrial Tribunal, Vadodara, in Reference (IT) No. 120/2000 by which the Industrial Tribunal has partly allowed the said Reference by substituting the order of punishment imposed by the disciplinary authority dated 26.2.1999 by imposing the punishment of stoppage of 2 increments with permanent effect.

3. The respondent workman was serving as a Conductor with the petitioner Corporation and a departmental enquiry was initiated against him by issuing chargesheet alleging inter alia that while he was on duty on 7.11.1988 when the bus was checked by the checking squad it was found that though fare was collected from 5 passengers he had not issued the tickets. After conclusion of the inquiry and holding the charge proved against him the departmental authority by order dated 26.2.1999 imposed the punishment of putting the respondent workman to the minimum of the pay-scale. Being aggrieved and dissatisfied with the order of punishment imposed by the disciplinary authority dated 26.2.1999, the respondent workman raised an industrial dispute which was referred to the Industrial Tribunal, Vadodara, for its adjudication being Reference (IT) No. 120/2000. The respondent workman did not challenge

the legality and validity of the departmental enquiry however challenged the findings of the Enquiry Officer. The Industrial Tribunal, by its judgment and award dated 8.12.2003 partly allowed the said Reference by quashing and setting aside the order of punishment imposed by the disciplinary authority and substituting the same by holding that the punishment imposed by the disciplinary authority is too harsh and disproportionate to the misconduct proved against him and substitute the same by stoppage of 2 increments with permanent future effect with effect from 26.2.1999. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Vadodara dated 8.12.2003 in Reference (IT) No. 120/2000, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Hardik R. Raval, learned advocate appearing on behalf of the petitioner has vehemently submitted that in fact there was an admission on the part of the respondent workman that he has not issued the tickets to 5 passengers. However, the Labour Court has considered the statement of the respondent workman that he had not issued tickets to 5 passengers as they were his relatives and when he neither collected the fare nor issued the tickets there was no intention on the part of the respondent workman to misappropriate amount. The Labour Court has held that the aforesaid aspect was not considered by the Reporter and the Enquiry Officer and therefore

the punishment which is imposed by the disciplinary authority and putting the respondent workman to the minimum of the pay-scale is too harsh and disproportionate to the misconduct proved. Shri Raval has submitted that the aforesaid reasoning and finding given by the Industrial Tribunal is perverse and contrary to the evidence on record. He has submitted that once it is proved that the respondent workman had not issued the tickets to the passengers though they might be relatives of the conductor it cannot be said that the workman has not committed any misconduct. He has further submitted that the misconduct of not issuing tickets to the passengers (not relatives) and not issuing tickets to passengers (relatives of the Conductor) are one and the same or which are on the same footing and therefore the Industrial Tribunal has materially erred in holding that the misconduct is not proved against the respondent workman and that the punishment of putting the respondent workman to the minimum of the pay-scale is illegal and/or too harsh and so submitting requested to allow the present Special Civil Application.

5. It is not in dispute that at the time of checking by the checking squad it was found that 5 passengers were not issued the tickets though fare was collected. However, the defence of the respondent workman is that he had not collected the fare and not issued tickets to the 5 passengers and

those 5 passengers were his relatives. Assuming that the charge of collecting fare is not established and/or proved then also as admitted and confessed by the respondent workman he had not issued tickets to 5 passengers. Not issuing tickets to the passengers who were relatives of the conductor can be said to be an act of misconduct. The Conductor has no right and/or authority to not to issue tickets to his relatives and/or allowing his relatives to travel in the bus without tickets.

5.1. It is also required to be noted that even after the misconduct in question in 1988, the respondent has committed as many as 12 misconducts for which he has been punished and for the last misconduct by order dated 21.5.2002 the respondent workman has been dismissed and thus the respondent workman had committed such misconducts in the past similar to the misconducts in question.

6. Under the circumstances, the finding given by the Industrial Tribunal that not issuing tickets to the passengers who were relatives of the Conductor was not considered by the Enquiry Officer and the disciplinary authority while holding the charge and misconduct proved against the respondent workman and that on that ground the punishment imposed by the disciplinary authority is too harsh is not only contrary to the evidence on record but it is perverse. Once it is held and proved that the charge

of not issuing tickets to the passengers is proved and established, in that case even considering the judgment of the Hon'ble Supreme Court in catena of judgments even the punishment of dismissal is justified. However, in the present case, the disciplinary authority itself has taken the lenient view and imposed the punishment of putting the respondent workman to the minimum of the pay-scale which was not required to be interfered with by the Industrial Tribunal exercising powers under Section 11-A of the I.D. Act. Under the circumstances, by quashing and setting aside the order of punishment imposed by the disciplinary authority and substituting the same exercising power under Section 11-A of the I.D. Act, the Industrial Tribunal has not acted judiciously, and therefore the judgment and award passed by the Industrial Tribunal requires to be quashed and set aside.

7. For the reasons stated above, the petition succeeds. The Judgment and Award passed by the Industrial Tribunal, Vadodara, dated 8.12.2003 in Reference (IT) No. 120/2000, is quashed and set aside and the order of punishment imposed by the disciplinary authority dated 26.2.1999 is hereby restored. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RM.